

1 P-R-O-C-E-E-D-I-N-G-S

2 1:52 p.m.

3 CHAIRPERSON ANDERSON: So our last
4 case on our calendar is Case Number 21-CMP-00060,
5 Empire Lounge, License Number 110702. Mr. Jain,
6 can you please elevate the rights of the parties
7 in this case, please?

8 MR. JAIN: Please stand by, Mr. Chair.

9 CHAIRPERSON ANDERSON: Thank you, sir.

10 MR. JAIN: Richard Bianco, your rights
11 have been elevated. Adam Mitchell, your rights
12 have been elevated. John Florentine, your rights
13 have been elevated, and James Jordan, your rights
14 have been elevated. That's all, Mr. Chair.

15 CHAIRPERSON ANDERSON: Thank you, sir.
16 Good afternoon, everyone. This is the -- a show
17 cause hearing for Empire Lounge. Let's have the
18 parties introduce themselves for the record.
19 Let's start with the Government, please. Spell
20 and state your name for the record, please.

21 MR. JORDAN: Good afternoon, Mr.
22 Chairman. James Jordan on behalf of the
23 District. That's J-A-M-E-S, J-O-R-D-A-N.

24 CHAIRPERSON ANDERSON: Good afternoon,
25 Mr. Jordan. Who is with you this afternoon, sir?

1 MR. JORDAN: Today Investigator Adam
2 Mitchell and Supervisory Investigator John
3 Fiorentine are with me.

4 CHAIRPERSON ANDERSON: All right.
5 Thank you. Mr. Mitchell, can you please spell
6 and state your name for the record, please?

7 INVESTIGATOR MITCHELL: Yes. It's
8 Adam Mitchell, A-D-A-M, M-I-T-C-H-E-L-L.

9 CHAIRPERSON ANDERSON: Good afternoon,
10 Mr. Mitchell. Mr. Fiorentine, can you please
11 spell and state your name for the record, please?
12 You're on mute, sir.

13 INVESTIGATOR FIORENTINE: John, J-O-H-
14 N, Fiorentine, F as in Frank-I-O-R-E-N-T-I-N-E.

15 CHAIRPERSON ANDERSON: And what's your
16 role with the agency, sir?

17 INVESTIGATOR FIORENTINE: I am a
18 supervisory investigator.

19 CHAIRPERSON ANDERSON: Thank you for
20 that. Mr. Bianco.

21 MR. BIANCO: Good afternoon, Mr.
22 Chair, members of the Board. My name is Richard
23 Bianco, last name spelled B-I-A-N-C-O. I am here
24 on behalf of the applicant.

25 CHAIRPERSON ANDERSON: And who is with

1 you, Mr. Bianco?

2 MR. BIANCO: My client is not with me.
3 Just me.

4 CHAIRPERSON ANDERSON: Thank you.
5 Good afternoon, everyone. This is a show cause
6 hearing status -- I'm sorry, show cause hearing
7 regarding Empire Lounge. And so Mr. Jordan, are
8 there any preliminary matters in this case?

9 MR. JORDAN: There are no preliminary
10 matters at this time, Mr. Chairperson.

11 CHAIRPERSON ANDERSON: Mr. Bianco, are
12 there any preliminary matters in this case?

13 MR. BIANCO: Nothing from the
14 licensee.

15 CHAIRPERSON ANDERSON: Now, Mr.
16 Bianco, this is a show cause hearing status, and
17 I'm just -- I'm sorry -- it's a show cause
18 hearing, and I'm just trying to get some
19 clarification. I see that you're not calling any
20 witnesses and, of course, as an attorney, you
21 cannot testify as an attorney. So why are we
22 having a hearing if the -- if you have no
23 witnesses to testify on behalf of the licensee?

24 MR. BIANCO: Sure, Mr. Anderson. I'm
25 happy to address that. As you know, it's the

1 Government's burden to prove by clear and
2 convincing evidence that the alcohol laws of the
3 District of Columbia has been violated. Based on
4 my review of the investigative report, they can't
5 make that burden and they can't make that burden
6 on the facts. They also can't make it on the
7 law.

8 My case will largely focus on a legal
9 argument, which will somewhat depend on what
10 facts the agency puts on, but regardless of how
11 they put it on, we have a legal argument with
12 respect to the statute. We will likely,
13 depending on how things go, be asking to brief
14 that because it does involve an issue of
15 statutory interpretation that can get a little
16 complex. But that's how we intend to proceed.
17 We're not going to put on any witnesses. We're
18 going to put the Government through its proof and
19 make legal argument thereafter.

20 CHAIRPERSON ANDERSON: Fine. All
21 right. Thank you. All right. So, Mr. Jordan,
22 do you wish to make an opening statement?

23 MR. JORDAN: Yes, Mr. Chairperson.
24 Good afternoon, Mr. Chairperson and Board
25 members. We are here today in the show cause for

1 Empire DC, LLC, trading as Empire Lounge, located
2 at 1909 9th street, NW, Washington, D.C. The
3 show cause notice issued in this matter concerns
4 the charge that the licensee played music at such
5 an intensity that it was hear in a premises
6 outside of the licensed establishment in
7 violation of D.C. Code Section 25-725(a).

8 The facts will establish that on
9 Wednesday, October 27, 2021, Alcoholic Beverage
10 Regular Administration Investigators, John
11 Fiorentine and Adam Mitchell visited the
12 establishment and found that it played music at
13 such intensity, it could be heard outside. At
14 approximately 10:45 p.m., Supervisory
15 Investigator Fiorentine received a complaint
16 through the ABRA concerning noise coming from the
17 licensed establishment. Alongside Investigator
18 Mitchell, he traveled to 1909 9th Street to
19 verify that complaint.

20 Outside of the establishment,
21 Investigator Mitchell identified heavy bass
22 emanating from the establishment. The
23 Investigators visited the complainant's home and
24 verified the noise could be heard. The
25 Investigators then visited the establishment to

1 advise the owner of the violation.

2 Today you will hear from both
3 Investigator Mitchell and Supervisory
4 Investigator Fiorentine. They will explain the
5 investigation beginning with outline complaint
6 and ending with the contact at the establishment.
7 They will explain that noise complaints are
8 always two investigator jobs so the agency is
9 sure of where noise is emanating from.

10 At the end of this hearing, the
11 Government will request that the Board apply a
12 penalty consistent with D.C. Code Section 25-830.
13 Thank you.

14 CHAIRPERSON ANDERSON: Thank you, Mr.
15 Jordan. Can I -- can I all of those who are
16 participating today, if you're not speaking,
17 please mute your microphone, please, or everybody
18 who's line, if you're not speaking -- when you're
19 not speaking, please mute your microphone.

20 Mr. Bianco, do you wish to make an
21 opening statement, or you will defer until later
22 on?

23 MR. BIANCO: I'll make a very brief
24 opening statement. Our position in this matter
25 is that the Government cannot meet the high

1 burden of clear and convincing evidence on two
2 fronts. They are not going to be show, based on
3 the evidence that they present, that there was
4 noise that can be heard inside of a residence
5 that was emanating from the licensee's
6 establishment.

7 Second, they are not going to be able
8 to establish by clear and convincing evidence
9 that any noise that may have been heard inside of
10 the residence constitutes a violation of D.C.
11 Code 25-725. Thank you.

12 CHAIRPERSON ANDERSON: All right.
13 Thank you, Mr. Bianco. Mr. Jordan, your first
14 witness.

15 MR. JORDAN: Yes, Mr. Chairperson.
16 The District will call Investigator Adam
17 Mitchell.

18 CHAIRPERSON ANDERSON: Mr. Mitchell,
19 can you raise your right hand, please? Do you
20 swear or affirm to tell the truth and nothing but
21 the truth?

22 INVESTIGATOR MITCHELL: Yes.

23 CHAIRPERSON ANDERSON: Your witness,
24 Mr. Jordan.

25 MR. JORDAN: Thank you, Mr.

1 Chairperson.

2 DIRECT EXAMINATION

3 MR. JORDAN: Investigator Mitchell,
4 where are you currently employed?

5 INVESTIGATOR MITCHELL: DC's Alcoholic
6 Beverage Regulation Administration.

7 MR. JORDAN: And what is your position
8 there?

9 INVESTIGATOR MITCHELL: I'm an
10 investigator.

11 MR. JORDAN: All right. And how long
12 have you been an investigator?

13 INVESTIGATOR MITCHELL: Two years and
14 three months about.

15 MR. JORDAN: Okay. And what are your
16 responsibilities in this role?

17 INVESTIGATOR MITCHELL: To conduct
18 investigations and inspections of ABC-licensed
19 establishments within the District of Columbia.

20 MR. JORDAN: And are you familiar with
21 the establishment we are here to discuss today?

22 INVESTIGATOR MITCHELL: Yes.

23 MR. JORDAN: How are you familiar with
24 Empire Lounge?

25 INVESTIGATOR MITCHELL: October 27th,

1 myself and Supervisor Investigator Fiorentine
2 substantiated a noise complaint coming from that
3 establishment.

4 MR. JORDAN: How did you receive that
5 complaint.

6 INVESTIGATOR MITCHELL: That came
7 through the ABRA hotline.

8 MR. JORDAN: And after it come to the
9 hotline, what did the agency do with this
10 complaint?

11 INVESTIGATOR MITCHELL: So Sergeant
12 Fiorentine, he receives those calls. He mans
13 that phone on our shift. He then asked for my
14 assistance to assist him in going to that
15 residence and substantiating that the noise could
16 be heard inside.

17 MR. JORDAN: And when you substantiate
18 a noise complaint, what goes into that
19 investigation?

20 INVESTIGATOR MITCHELL: There has to
21 be multiple investigators go to confirm that it's
22 to just one person hearing, it's more than one.
23 So we'd enter the residence. All the windows and
24 doors would be closed. If we can hear the music
25 coming in or bass or anything, then we'd

1 investigate further to identify where it's coming
2 from. And then that's basically it.

3 MR. JORDAN: And for this
4 investigation, what did you do?

5 INVESTIGATOR MITCHELL: So we went to
6 -- the residence was on 8th Street, so we went to
7 8th Street first. There's a few alleys between
8 8th and 9th Street. We heard some music from the
9 alley on 8th. At that point, we didn't know
10 where it was coming from cause we weren't
11 actually on the alley between 8th and 9th. We
12 were just on the 8th Street entrance to one of
13 the side alleys. We then the complainant to come
14 outside. He agreed to let us into his residence.
15 Went to the residence. Went to one bedroom. The
16 windows were closed. Heard base coming in. It
17 was pretty heavy. He then showed us another
18 room. In the back, there was another bedroom.
19 In there, the windows -- and that one had a door.
20 The windows and doors were closed. Again, same
21 thing, music and bass was heard inside.

22 From there, we exited to the rear of
23 their condo building onto the alley between 8th
24 and 9th, and that's where we could really hear
25 the loud music coming from the building directly

1 behind theirs, which was 1909 9th Street.

2 MR. JORDAN: And how do you know that
3 that was Empire Lounge?

4 INVESTIGATOR MITCHELL: Empire Lounge,
5 their address is 1909 9th Street and on the rear
6 of their building, on the second level, next to
7 the door, there's an address plate that reads
8 1909.

9 MR. JORDAN: Okay. And did you visit
10 the establishment after the complainant's home?

11 INVESTIGATOR MITCHELL: Yes. After
12 the complaint, we verified that. Then we went
13 around to 9th Street. We spoke with the doorman
14 outside and asked for the owner or ABC manager to
15 come out. Nobody came out. We advised them of
16 the complaint, that we substantiated. Guy said
17 he understood. He'd lower it and ensure that any
18 windows or doors upstairs would be closed. He
19 did say that he thought all the windows and doors
20 were closed but he would double-check.

21 MR. JORDAN: Okay. Mr. Chairperson,
22 permission to share my screen?

23 CHAIRPERSON ANDERSON: Mr. Jain, can
24 you please allow Mr. Jordan to share his screen,
25 please?

1 MR. JAIN: Please go ahead.

2 MR. JORDAN: Thank you. Mr.
3 Chairperson, I'm going to show what has been
4 marked as Government Exhibit 1.

5 CHAIRPERSON ANDERSON: Sure. Go
6 ahead, please.

7 MR. JORDAN: Investigator Mitchell,
8 can you identify this document?

9 INVESTIGATOR MITCHELL: It looks like
10 the case report for this case.

11 MR. JORDAN: Okay. And can you
12 explain what a case report is?

13 MR. BIANCO: Mr. Chair, on behalf of
14 the applicant --

15 CHAIRPERSON ANDERSON: Yes, Mr.
16 Bianco.

17 MR. BIANCO: -- we consent to the
18 admissibility of this document. We don't need to
19 go through the authentication process. We're
20 good.

21 CHAIRPERSON ANDERSON: I appreciate
22 that, Mr. Bianco -- I appreciate that but again,
23 this is also a part of the Board's record, that
24 it doesn't have to be formally moved into
25 evidence so that's fine. Go ahead. All right.

1 MR. JORDAN: Thank you for that.

2 CHAIRPERSON ANDERSON: Go ahead, Mr.
3 Jordan.

4 MR. JORDAN: Thank you, Mr.
5 Chairperson and Mr. Bianco. We would like to
6 confirm that Government's Exhibit 1 is in
7 evidence.

8 CHAIRPERSON ANDERSON: It's -- the
9 document will -- it's automatically in evidence.
10 It doesn't have to be moved into evidence
11 officially, because it is a part of the Board's
12 record. So pursuant to statute, it is a part of
13 our record that will be considered, so if you
14 want to ask the witness questions about the
15 document, you are free to do that.

16 MR. JORDAN: Okay. Thank you, Mr.
17 Chairperson. And Investigator Mitchell, are
18 there any attachments to your case report?

19 INVESTIGATOR MITCHELL: Yes. There
20 was two exhibits, a Board order and then the
21 settlement agreement for the establishment.

22 MR. JORDAN: Okay. And no further
23 questions, Mr. Chairperson.

24 CHAIRPERSON ANDERSON: Thank you, Mr.
25 Jordan. Mr. Bianco, any questions?

1 MR. BIANCO: Yes. I do have a few --
2 a few questions.

3 CROSS-EXAMINATION

4 MR. BIANCO: Investigator, I'm looking
5 at your report, specifically on page one where
6 you talk about the complaint call coming in. And
7 the sentence that I'm looking at reads, "The
8 complainant provided his address which was
9 verified as lying within a residentially-zoned
10 area based on the D.C. zoning maps." And what my
11 question is, is whether you did that verification
12 or somebody else did?

13 INVESTIGATOR MITCHELL: That would
14 have been Supervisory Investigator Fiorentine.

15 MR. BIANCO: Great. Thank you very
16 much. Moving on. After the fact, after you --
17 I'm sorry -- this is your report, correct? So
18 you wrote this?

19 INVESTIGATOR MITCHELL: Yes.

20 MR. BIANCO: Okay. So, after the
21 fact, did you do anything with respect to
22 verifying the zoning of this particular address?

23 INVESTIGATOR MITCHELL: No.

24 MR. BIANCO: Okay. I want to talk
25 about the -- a little bit about the methodology

1 that you went through to determine that this was
2 a violation. If I understood your testimony
3 correctly, you first stood in the alley behind
4 the establishment at about 11:00 p.m. according
5 to your report, and then you went up to the unit
6 and could hear music inside at approximately
7 11:05 p.m., correct?

8 INVESTIGATOR MITCHELL: The alley --
9 the initial alley we were in actually is on the
10 entrance of 8th Street so it's not directly
11 behind any of the establishments. So that would
12 be -- the clarification on that, we weren't
13 behind the establishment. It was an alley that
14 would lead to the alley that runs between 8th and
15 9th, but it's the --it's an entrance and exit to
16 the alley on 8th Street.

17 MR. BIANCO: Okay. And both you and
18 Investigator Fiorentine were together in the
19 alley, correct?

20 INVESTIGATOR MITCHELL: Yes.

21 MR. BIANCO: Okay. And then both you
22 and Investigator Fiorentine went inside of the
23 residence, correct?

24 INVESTIGATOR MITCHELL: Yes.

25 MR. BIANCO: Okay. And as I

1 understand the set up here, the residence that
2 we're talking about is an apartment of a
3 condominium unit, is that correct?

4 INVESTIGATOR MITCHELL: Yes.

5 MR. BIANCO: Okay. And what floor, if
6 you recall, is the condominium unit on?

7 INVESTIGATOR MITCHELL: It's the
8 lowest level. I'm not sure how they label their
9 floors. We did how to walk down a few steps. I
10 don't know if they would consider that one or the
11 basement so, but it was the lowest one we could
12 get into.

13 MR. BIANCO: Okay. And once both you
14 and Investigator Fiorentine were standing inside
15 of the unit, how is it that you confirmed that
16 the noise you heard was emanating from the
17 licensee?

18 INVESTIGATOR MITCHELL: So the two
19 rooms that we were able to like the hear the
20 noise coming in from, it was heavy bass coming
21 in. So one of the rooms, like I said earlier,
22 that had a -- that had a exit door out the back,
23 so we went out the back, up a couple steps onto
24 the back parking pad area which led -- it's
25 directly behind 1909 9th Street. And the way the

1 music was coming down, it appeared coming from
2 the upper level, so that's kind of -- the first
3 two levels are, say, the same. They're combined
4 and then there's a roof on the second level that
5 goes back to the third level, so we couldn't
6 really see the third level, but the noise was
7 coming over the second level down and kind of
8 into that alley form 1909 9th Street. They were
9 identified by the address plate on the second
10 level.

11 MR. BIANCO: Okay. So are you
12 familiar with the 1900 block of 9th Street?

13 INVESTIGATOR MITCHELL: Somewhat, yes.

14 MR. BIANCO: Okay. Do you have
15 occasion to go there to -- have you had occasion
16 to go there in your capacity as an investigator
17 over the last 2-1/2 years?

18 INVESTIGATOR MITCHELL: Yes.

19 MR. BIANCO: And would you agree that
20 there is a dense -- dense population of licensed
21 establishments on that block?

22 INVESTIGATOR MITCHELL: Yes.

23 MR. BIANCO: Okay. And a number of
24 those establishments face this alley between 9th
25 and 8th Street, is that correct?

1 INVESTIGATOR MITCHELL: Yes, that's
2 correct.

3 MR. BIANCO: Okay. And there's at
4 least three or four that are immediately adjacent
5 to 1909 9th Street, correct?

6 INVESTIGATOR MITCHELL: Yes.

7 MR. BIANCO: Okay. Are you familiar
8 with the Ambassador Restaurant next door at 1907
9 9th Street?

10 INVESTIGATOR MITCHELL: Somewhat.

11 MR. BIANCO: Okay. How about Cortez
12 at 1905?

13 INVESTIGATOR MITCHELL: I don't
14 believe I've been to that establishment, no.

15 MR. BIANCO: Okay. From where you
16 were standing in the alley, could you see any of
17 the adjacent establishments, whether they had a
18 summer garden or roof deck facing the alley?

19 INVESTIGATOR MITCHELL: No.

20 MR. BIANCO: Okay. Did you, at any
21 point, determine whether the adjacent
22 establishments were playing the same type of
23 music as the licensee?

24 INVESTIGATOR MITCHELL: No. We only
25 visited the 1909 9th Street, yes, so Empire

1 Lounge.

2 MR. BIANCO: Okay. And you entered
3 from the 8th Street side, so you wouldn't have
4 had occasion to walk passed any of those adjacent
5 establishments, is that correct?

6 INVESTIGATOR MITCHELL: We did walk
7 down 9th Street. Whenever we came to go make
8 notification, we actually did walk the block
9 cause we didn't come through the alley. We
10 parked on the next street over. I can't recall
11 right now but -- and then walked up 9th Street
12 so.

13 MR. BIANCO: Okay. But that was on
14 the front side of 9th Street, not the alley side,
15 correct?

16 INVESTIGATOR MITCHELL: Yes, that's
17 correct.

18 MR. BIANCO: Okay. Great. No further
19 questions. Thank you.

20 CHAIRPERSON ANDERSON: Thank you, Mr.
21 Bianco. Any questions by any Board members? No
22 questions by any Board members? All right. Let
23 me ask you a question, Mr. Mitchell. Do you know
24 whether or not the -- was the Ambassador Lounge,
25 do you know whether or not they were playing

1 music?

2 INVESTIGATOR MITCHELL: No.

3 CHAIRPERSON ANDERSON: I'm sorry, were
4 they playing music or do you not know? I'm just
5 trying to find out. Do you know whether or not
6 music --

7 INVESTIGATOR MITCHELL: I do not know.

8 CHAIRPERSON ANDERSON: You don't know.
9 What about the Cortez establishment, do you know
10 if they were playing any music?

11 INVESTIGATOR MITCHELL: No. I do not
12 know.

13 CHAIRPERSON ANDERSON: So how are you
14 sure that the music that was being played was
15 coming from the Empire Lounge?

16 INVESTIGATOR MITCHELL: It appeared
17 that it was coming from the upper level, the
18 third level of Empire Lounge just from how loud
19 it was and the way it was coming, seemed like it
20 was just coming right over the roof of the second
21 level and down into the alley. That was our
22 observations there.

23 CHAIRPERSON ANDERSON: You're saying
24 it seemed but you're not -- what do you mean by
25 "it seemed" that it was coming from the third

1 level? I mean it can't be it seemed. It has to
2 be -- was it coming from there? You perceive
3 it's coming from there? Or just I'm trying to
4 find out.

5 INVESTIGATOR MITCHELL: Yes. So we
6 were right behind that building and the noise was
7 coming -- there was no noise coming from the
8 sides. It was coming straight over the roof and
9 down is what -- that's what we perceived there
10 so.

11 CHAIRPERSON ANDERSON: Now when you
12 were in the residence, was it the same music that
13 was -- that you were hearing in the residence
14 that you heard in the Empire Lounge, or is it
15 just you heard noise in the residence and you
16 also heard noise at Empire Lounge? Do you know
17 was it the same exact music that you were
18 hearing?

19 INVESTIGATOR MITCHELL: Yes. It was
20 the same. So as soon as we opened the back door
21 and went out, it just got louder but it was the
22 same music. It was the same music we heard from
23 exiting the door to now back parking area to in
24 the alley behind their establishment.

25 CHAIRPERSON ANDERSON: When you said,

1 "the same music," is it the same song or the same
2 beat or are you saying -- is it -- what is it,
3 what are you hearing?

4 INVESTIGATOR MITCHELL: I couldn't
5 make out lyrics but it was just heavy bass, the
6 beat.

7 CHAIRPERSON ANDERSON: Thank you. Any
8 questions by any of the Board members?

9 MEMBER GRANDIS: Mr. Chairman?

10 CHAIRPERSON ANDERSON: Yes, Mr.
11 Grandis.

12 MEMBER GRANDIS: May I?

13 CHAIRPERSON ANDERSON: Yes. Thank
14 you.

15 MEMBER GRANDIS: Thank you. Mr.
16 Mitchell, had you been out -- prior to this
17 evening, had you been out to investigate other
18 noise violations?

19 INVESTIGATOR MITCHELL: Yes.

20 MEMBER GRANDIS: Had you ever been
21 called to this particular establishment in the
22 past regarding a noise violation?

23 INVESTIGATOR MITCHELL: No, not this
24 one.

25 MEMBER GRANDIS: And in your training

1 -- just explain to me a bit how you're trained to
2 determine whether the noise is coming from a
3 particular establishment?

4 INVESTIGATOR MITCHELL: There's
5 different ways. There's always multiple
6 investigators. On this one we had two.
7 Sometimes you'll need three if you have to go
8 inside the establishment to verify the noise and
9 lyrics. In this case, SI Fiorentine and myself,
10 we didn't feel the need cause of how loud it was
11 and where we heard it coming from, form directly
12 behind that building.

13 MEMBER GRANDIS: So was there another
14 investigator out that evening at this location?

15 INVESTIGATOR MITCHELL: No. It was
16 just two of us that night.

17 MEMBER GRANDIS: Who was the second
18 one?

19 INVESTIGATOR MITCHELL: Supervisory
20 Investigator Fiorentine.

21 MEMBER GRANDIS: Okay. And how was
22 this music amplified?

23 INVESTIGATOR MITCHELL: I'm not sure.

24 MEMBER GRANDIS: Were there speakers
25 in the establishment?

1 INVESTIGATOR MITCHELL: We didn't make
2 entrance into the establishment. The owner met
3 us out front.

4 MEMBER GRANDIS: You did not go into
5 the establishment?

6 INVESTIGATOR MITCHELL: That's
7 correct.

8 MEMBER GRANDIS: So how do you know
9 what kind of music they were playing?

10 INVESTIGATOR MITCHELL: Just from what
11 we heard coming from the upper level into the
12 alley in the back.

13 MEMBER GRANDIS: And was that a band,
14 a DJ, what were you told?

15 INVESTIGATOR MITCHELL: I can't recall
16 what he said. He just -- having music.

17 MEMBER GRANDIS: Having music, okay.
18 Thank you.

19 CHAIRPERSON ANDERSON: All right. Any
20 questions by any Board members? Mr. Bianco, any
21 questions based on the questions that the Board
22 asked?

23 MR. BIANCO: No, Mr. Chair.

24 CHAIRPERSON ANDERSON: Mr. Jordan, any
25 redirect?

1 MR. JORDAN: No, Mr. Chair.

2 CHAIRPERSON ANDERSON: All right.

3 Thank you. Mr. Mitchell. Thank you very much
4 for your testimony. You are excused. Mr.
5 Jordan, you have another witness.

6 MR. JORDAN: Yes, Mr. Chairperson.
7 The District calls Supervisory Investigator John
8 Fiorentine.

9 CHAIRPERSON ANDERSON: Mr. Fiorentine,
10 can you please raise your right hand, please? Do
11 swear or affirm to tell the truth and nothing but
12 the truth?

13 INVESTIGATOR FIORENTINE: I do.

14 CHAIRPERSON ANDERSON: All right.
15 Thank you. Your witness, sir.

16 MR. JORDAN: Thank you.

17 DIRECT EXAMINATION

18 MR. JORDAN: Investigator Fiorentine,
19 where are you currently employed?

20 INVESTIGATOR FIORENTINE: I am a
21 Supervisory Investigator with the Alcoholic
22 Beverage Regulation Administration.

23 MR. JORDAN: And how long have you
24 been a supervisory investigator?

25 INVESTIGATOR FIORENTINE: For

1 approximately three years.

2 MR. JORDAN: And what are your
3 responsibilities in this position?

4 INVESTIGATOR FIORENTINE: I am a team
5 supervisor responsible for conducting inspections
6 and investigations within the District of
7 Columbia, and I also am the program manager for
8 the noise control program.

9 MR. JORDAN: Okay. And so as program
10 manager for the noise control program, how many
11 of these noise violations have you responded to?

12 INVESTIGATOR FIORENTINE: Personally,
13 I have responded to approximately a dozen, but I
14 have coordinated noise enforcement operations in
15 the hundreds.

16 MR. JORDAN: Okay. And are you
17 familiar with the establishment in this case?

18 INVESTIGATOR FIORENTINE: I am
19 familiar with the establishment.

20 MR. JORDAN: And how are you familiar
21 with this establishment?

22 INVESTIGATOR FIORENTINE: I am
23 familiar with this establishment due to the noise
24 complaint that was made, followed up, and
25 substantiated by myself.

1 MR. JORDAN: Okay. Could you tell us
2 about that night beginning with the original
3 complaint?

4 INVESTIGATOR FIORENTINE: Yes. So at
5 approximately 10:45, a citizen complainant
6 contacted the ABRA hotline and filed a noise
7 complaint alleging that the establishment was
8 playing music that could be heard within their
9 residence. I then asked if they desired to
10 substantiate that complaint. The citizen said
11 they did.

12 I then contacted Investigator
13 Mitchell, who from my previous tasking, I knew
14 was within the area and could substantiate the
15 complaint. We always send two investigators,
16 both for safety and also for two-person
17 integrity.

18 We then proceeded to the location from
19 the 8th Street -- excuse me -- from the alley
20 entrance or exit on the south. We were able to
21 hear some noise and then made the left turn onto
22 8th Street -- excuse me, correction. Prior to
23 responding to the location, I looked up whether
24 the residence was residentially zoned, and I do
25 that by using the D.C. zoning map. I typed in

1 the address that was provided by the resident
2 within the system, and it came back to be a
3 residential property. That's important because
4 we cannot substantiate noise complaints from
5 zones other than residential.

6 So we then deployed to the -- or
7 responded to the area. We entered the
8 complainant's apartment, walked down about a half
9 flight of steps, proceeded to the rear of the
10 residence to a bedroom. We were able to hear
11 noise but not lyrics, bass, then proceeded to the
12 second room which was -- shared a wall and faced
13 the rear of the building and again could hear it
14 louder.

15 We then proceeded up a half flight of
16 steps to the parking pad; again, could hear it
17 louder. We had the complainant open his garage
18 doors, continued to be louder, proceeded to the
19 rear of the establishment. We couldn't enter the
20 rear of the establishment because it was -- it
21 was locked. There was a gate. There's a fire
22 escape that proceeds from the third floor of the
23 establishment, and there's a door there.

24 Based on my professional knowledge and
25 experience, I believe the noise was either coming

1 from that door, the side window, or from the roof
2 of the establishment. Based on my professional
3 knowledge and experience, I know that previously,
4 individuals had gone onto the roof of the
5 building. And so I knew there was a
6 entrance/exit, potentially a window up there as
7 well. And so I believe the noise was coming from
8 one of those sources.

9 We then traveled to the front of the
10 establishment and informed them that -- that we
11 had substantiated a noise complaint. And I
12 believe the noise was coming from either that
13 third floor rear door because again, I'd been in
14 the establishment and I know that there is no
15 sound barrier between the interior of the
16 establishment and that rear door or the window or
17 on the third floor. So we acknowledged the
18 complaint and we proceeded on other assignments

19 MR. JORDAN: Okay. So Investigator
20 Fiorentine, pulling you back to the complainant's
21 home, were you able to verify that there was no
22 music emanation coming from within that apartment
23 building?

24 INVESTIGATOR FIORENTINE: Correct.
25 They did not have music playing, both the

1 resident -- there were two residents there. The
2 apartment was quiet. No TV was playing. All
3 doors and windows were closed prior to us
4 standing in the room in silence, and we, both I
5 and Investigator Mitchell independently stated
6 that we could hear noise both -- in both rooms.

7 MR. JORDAN: Okay. And at the
8 specific location of 1909 9th Street, is Empire
9 Lounge the only establishment there?

10 INVESTIGATOR FIORENTINE: There --
11 there is another establishment on the first
12 floor, but they are the only establishment on the
13 third floor that -- that would go to the rear.

14 MR. JORDAN: Okay. And you identified
15 the source of the source of the noise coming off
16 of the first floor, correct?

17 INVESTIGATOR FIORENTINE: That is
18 correct. We -- we went right to the gate, the --
19 the rear property line, and it was clear that to
20 us, the noise was -- or to me, that the noise was
21 coming from either the door or window or from a
22 entry point on the roof.

23 MR. JORDAN: Okay. No further
24 questions, Mr. Chairperson.

25 CHAIRPERSON ANDERSON: Mr. Bianco?

1 MR. BIANCO: Yes.

2 CROSS-EXAMINATION

3 MR. BIANCO: So Investigator
4 Fiorentine, I -- I understand from your testimony
5 that you were -- you were the one who verified
6 the zoning of the -- of the residence is that
7 correct?

8 INVESTIGATOR FIORENTINE: That is
9 correct.

10 MR. BIANCO: Okay. And if I remember
11 correctly, you verified by using the interactive
12 zoning map?

13 INVESTIGATOR FIORENTINE: That is
14 correct.

15 MR. BIANCO: Okay. So I did not see
16 it in the report. What -- what zone does the
17 residence lie in?

18 INVESTIGATOR FIORENTINE: I do not
19 exactly recall, but it is residential. Eighth --
20 8th Street is zoned residential.

21 MR. BIANCO: Okay. And what's your --
22 what -- what's your basis for that statement, is
23 it your recollection of the search or because
24 there was a residence there?

25 INVESTIGATOR FIORENTINE: That is

1 based on my recollection of the search. We do
2 not respond to complainants who are -- who desire
3 to substantiate who reside in mixed use, PDR,
4 which is - like a development or a downtown
5 zone. We only respond to residents that are
6 residentially zoned, because I don't want to give
7 the citizen the impression that we can
8 substantiate a noise complaint from their
9 location when we are not able to take enforcement
10 action.

11 MR. BIANCO: Okay. I also did not see
12 in the report the address of the complaining
13 residence. What is that address?

14 INVESTIGATOR FIORENTINE: I do not
15 exactly recall the street address. As a
16 practice, we have not included the street address
17 of anonymous complainants.

18 MR. BIANCO: No. I mean I understand
19 protecting the privacy concern, so it wouldn't
20 appear in the report. I didn't mean to suggest
21 it was incomplete, just whether you can now
22 verify from notes or your recollection what that
23 address?

24 INVESTIGATOR FIORENTINE: I can't
25 recall the -- the exact address. I know it was

1 two, possibly three addresses south from Florida
2 Avenue.

3 MR. BIANCO: Okay. And you said it
4 was immediate -- across the alley immediately
5 behind 1909, correct?

6 INVESTIGATOR FIORENTINE: Roughly. It
7 might have been kitty-corner where two residences
8 split, but from opening the garage door, I did
9 not walk but 8 to 10 feet to the establishment.

10 MR. BIANCO: Sure. So you testified
11 about how you verify whether the complaining
12 resident is in a residential zone, and you don't
13 -- I believe I had it correct that you don't
14 respond if it's in something other than a
15 residential zone, correct?

16 INVESTIGATOR FIORENTINE: That is
17 correct.

18 MR. BIANCO: Okay.

19 INVESTIGATOR FIORENTINE: To the
20 complaints. We will respond to the source of the
21 noise, but we will not respond to the -- to a
22 non-residentially zoned residence.

23 MR. BIANCO: Okay. How do you treat
24 mixed use zones for purposes of making that
25 determination?

1 INVESTIGATOR FIORENTINE: Mixed use
2 zones do not fall within residentially zones and
3 so we would not enter a mixed use zoned
4 residence. We would go to the -- if the
5 complainant said this establishment is making
6 noise, I will have an investigator respond to the
7 establishment. But we do not enter residences
8 within mixed use zones.

9 MR. BIANCO: Okay. And do you recall
10 from your review of the zoning map on the day
11 that the complaint came in whether the
12 complaining residence and the licensee in this
13 case are situated in the same zone?

14 INVESTIGATOR FIORENTINE: They are
15 not. 1909 is mixed use zoned. Residential
16 zoning does not start on 9th Street for maybe
17 three or four storefronts south. 8th Street is
18 residentially zoned, so there is a mixed use
19 corridor.

20 MR. BIANCO: And there was some
21 testimony about the methodology that you used to
22 determine that sound was emanating from the
23 licensee, so I want to go to that for a minute.
24 I believe both you and Investigator Mitchell
25 testified that substantiating residential noise

1 complaints are a two or sometimes three-person
2 job, correct?

3 INVESTIGATOR FIORENTINE: That is
4 correct.

5 MR. BIANCO: Okay. And something that
6 I have seen in other noise violation cases is one
7 investigator will be inside of the residence, the
8 other investigator will be outside of the
9 establishment, and the two or sometimes three
10 communicate about what is being played at the
11 time the two parties are observing it. Are you -
12 - are you familiar with that procedure in your
13 investigations?

14 INVESTIGATOR FIORENTINE: I am.

15 MR. BIANCO: Okay. And it's my
16 understanding that that procedure was not
17 followed in this particular instance?

18 INVESTIGATOR FIORENTINE: That is
19 correct.

20 MR. BIANCO: Okay. What -- so there
21 was some testimony -- I think it was your
22 testimony -- that there -- that the licensee that
23 is the subject of this violation occupies the
24 second and third floor of the building but that
25 there is a different establishment on the first

1 floor of the building, correct?

2 INVESTIGATOR FIORENTINE: That is my
3 understanding, correct.

4 MR. BIANCO: Okay. And do you know
5 whether or not the establishment on the first
6 floor of the building was playing any music that
7 night?

8 INVESTIGATOR FIORENTINE: If I recall
9 correctly, it was not open. The first floor did
10 not have any patrons at the time and that when
11 the -- when the door opened, it was clear that
12 patrons were on the upper level, up the flight of
13 steps.

14 MR. BIANCO: Excellent, great. Thank
15 you very much, Investigator. I don't have any
16 more questions.

17 CHAIRPERSON ANDERSON: Thank you, Mr.
18 Bianco. Any questions by any Board members?

19 MEMBER GRANDIS: Yes, sir.

20 CHAIRPERSON ANDERSON: Go ahead, Mr.
21 Grandis.

22 MEMBER GRANDIS: Mr. Fiorentine, thank
23 you for attending today and your presentation.
24 From reading the report and listening to the
25 testimony, you did not enter the establishment

1 either, correct?

2 INVESTIGATOR FIORENTINE: That is
3 correct.

4 MEMBER GRANDIS: But you did speak to,
5 I think you said, the owner?

6 INVESTIGATOR FIORENTINE: Yes.

7 MEMBER GRANDIS: And he committed that
8 he would check to see if windows were open or
9 regardless, I think the language said,
10 regardless, they would lower the volume?

11 INVESTIGATOR FIORENTINE: That is
12 correct.

13 MEMBER GRANDIS: Did they do that?

14 INVESTIGATOR FIORENTINE: It is my
15 understanding. Before we left the complainant,
16 in the rear of his establishment, I said that we
17 would obviously notify the establishment that
18 they were making noise but that they could call
19 us if it continued to be loud, that they could
20 contact the hotline again that we would -- the
21 hotline is staffed until 4:00 in the morning.
22 They -- the complainants did not.

23 MEMBER GRANDIS: And so --

24 INVESTIGATOR FIORENTINE: And so --

25 MEMBER GRANDIS: Excuse me, go ahead.

1 INVESTIGATOR FIORENTINE: Based on the
2 fact that the complainant did not, that they no
3 longer heard the noise in their apartment.

4 MEMBER GRANDIS: So just to help
5 clarify your report, your report, maybe it does
6 state but I didn't read that it stated that you
7 went with either the employee or the owner to the
8 alley to the rear. Were you in the rear? Did
9 you -- so it's clear, when you went -- when you
10 had the owner come down, was that in front of the
11 establishment or was that in the rear --

12 INVESTIGATOR FIORENTINE: That was on
13 9th Street.

14 MEMBER GRANDIS: -- was that in the
15 rear or was that well off to the rear?

16 (Simultaneously speaking.)

17 MEMBER GRANDIS: I'm sorry?

18 INVESTIGATOR FIORENTINE: No. That
19 was on 9th Street. That was in the front of the
20 establishment.

21 MEMBER GRANDIS: So you could have
22 walked to the rear with the owner to confirm that
23 the noise that you heard emanating was the noise
24 from his facility, but you did not do that?

25 INVESTIGATOR FIORENTINE: No, sir. We

1 did not. There was significant construction on
2 9th Street. We -- if I recall, we were parked in
3 a precarious situation and so I wanted to make
4 the notification and then depart the area for
5 other assignments and to move the government
6 vehicle.

7 MEMBER GRANDIS: So you did not enter
8 the establishment?

9 INVESTIGATOR FIORENTINE: That is
10 correct.

11 MEMBER GRANDIS: But that you claim
12 you heard bass, at least the report says you
13 could hear bass inside of the complainant's
14 apartment?

15 INVESTIGATOR FIORENTINE: That is
16 correct. And we did hear music when the door --
17 when the door opened to the establishment on 9th
18 Street, we did hear music. I mean it was not --
19 yes, we did hear music.

20 MEMBER GRANDIS: And was the music
21 from a DJ or a band?

22 INVESTIGATOR FIORENTINE: It was from
23 either DJ or pre-recorded based on my -- again,
24 professional experience and knowledge of the
25 establishment, I'm aware of where they position

1 their DJ on -- on that floor. I -- I know the
2 layout, the construction of the floor, that there
3 is no sound barrier to that rear door. There's
4 a, like a light interior door to a small room
5 that has a window, but I know that if a gasket
6 had failed on that rear emergency door or door to
7 the fire escape failed, noise -- music would
8 escape. And I'm also familiar with the roof,
9 that music would escape, if a door or window was
10 not sealed, music would escape from the roof.

11 MEMBER GRANDIS: And from your
12 knowledge, have --

13 INVESTIGATOR FIORENTINE: The music --

14 MEMBER GRANDIS: Go ahead.

15 INVESTIGATOR FIORENTINE: The music we
16 heard from the Entenmann trance matched the
17 similar genre of the music heard at the rear of
18 the establishment, and so I felt no need to make
19 entry.

20 MR. GOLDEN: So your practice and
21 experience is not to enter the establishment to
22 confirm that the music you were hearing in the
23 alley or in a residential-zoned apartment is
24 exactly the music that was emanating from that?
25 So you don't usually go into establishments?

1 INVESTIGATOR FIORENTINE: Only if I
2 can't ascertain the source. So, for example,
3 we'll take 9th Street. If I could not ascertain
4 which of the establishments and as in previous
5 experiences, we have not -- we have had had to
6 make entry into various establishments to
7 determine who was playing what song, because many
8 of the establishments play the same genre of
9 music, and so it could be difficult. But in this
10 instance, there was no difficulty. There was
11 only one source of noise and so we -- I saw it as
12 unnecessary and decided to commit to other
13 operations.

14 MEMBER GRANDIS: Would it have been
15 helpful if you had gone in and determined that
16 there were speakers that perhaps were facing the
17 rear or placed in a way that if they were to move
18 them, from your experience, perhaps it would
19 resolve the problem?

20 INVESTIGATOR FIORENTINE: Certainly,
21 in retrospect given the fact that -- that we had
22 two subsequent violations that are alleged from
23 that -- that establishment, perhaps I -- I could
24 have mitigated those two further violations. But
25 at the time, given the circumstances, I -- I

1 thought that notifying the owner of the violation
2 would suffice. In retrospect, I -- I perhaps
3 would have chosen differently.

4 MEMBER GRANDIS: And your -- I don't
5 think your report mentions it, but are there
6 similar -- let me back up -- do you know what
7 endorsements this particular licensee has?

8 INVESTIGATOR FIORENTINE: I believe
9 they have entertainment, cover charge, holiday
10 extension, dancing.

11 MEMBER GRANDIS: You mentioned cover
12 charge and you mentioned there's now dancing and
13 a DJ, are you familiar with other establishments
14 within that block that have similar endorsements
15 that allow music?

16 INVESTIGATOR FIORENTINE: Yes, I am,
17 sir.

18 MEMBER GRANDIS: And were they opened
19 --

20 INVESTIGATOR FIORENTINE: Yes, I am,
21 sir.

22 MEMBER GRANDIS: Were they opened that
23 evening?

24 INVESTIGATOR FIORENTINE: Some were,
25 some were not. They -- I can't recall exactly

1 who was open and who was not open, but some were
2 and then some were not.

3 MEMBER GRANDIS: How close would you
4 say the closest one that would have music to this
5 establishment? If you don't know, that's fine
6 but.

7 INVESTIGATOR FIORENTINE: Within one
8 storefront --

9 MEMBER GRANDIS: Within one
10 storefront.

11 INVESTIGATOR FIORENTINE: -- so within
12 -- within 20 feet, there's probably another
13 establishment similarly licensed.

14 MEMBER GRANDIS: Did you walk in front
15 of that one or to the rear of that one?

16 INVESTIGATOR FIORENTINE: Yes. So the
17 Ambassador may be the closest, and I am familiar
18 with the Ambassador having a rear room for pool.
19 They were not the source of the noise based on
20 our observations to the rear and our observations
21 to the front. To the north, the next closest
22 establishment would have been Right Spot, I
23 believe, and they were not the source of the
24 noise. The noise was not coming from a
25 northwesterly angle. It was coming from, again,

1 either the -- that third floor fire escape door,
2 window, or roof --

3 MEMBER GRANDIS: Thank you.

4 INVESTIGATOR FIORENTINE: -- based on
5 the intensity of the noise.

6 MEMBER GRANDIS: I want to thank you
7 for your answers to the questions and thank you
8 for your report today. Thank you, Mr. Chairman.

9 CHAIRPERSON ANDERSON: Yes, Mr.
10 Grandis. Any other questions by any other Board
11 members? Mr. Bianca, any questions based on the
12 questions asked by the Board?

13 MR. BIANCO: No, sir.

14 CHAIRPERSON ANDERSON: Mr. Jordan, any
15 redirect?

16 MR. JORDAN: No, Mr. Chairperson.

17 CHAIRPERSON ANDERSON: All right.
18 Thank you. Mr. Jordan, any other witness?

19 MR. JORDAN: No, Mr. Chairperson, no
20 other witnesses.

21 CHAIRPERSON ANDERSON: Does the
22 Government rest?

23 MR. JORDAN: Yes, the Government
24 rests.

25 CHAIRPERSON ANDERSON: Mr. Bianco?

1 MR. BIANCO: No witnesses.

2 CHAIRPERSON ANDERSON: Is the
3 Government ready for closing?

4 MR. JORDAN: Yes, Mr. Chairperson.

5 CHAIRPERSON ANDERSON: Go ahead, sir.

6 MR. JORDAN: Board members, the
7 District today has met its statutory burden of
8 substantial evidence that -- in proving that the
9 licensee has played music heard within a
10 neighboring establishment in violation of D.C.
11 Code 25-725. Under 23 DCMR 1711.5, the applicant
12 shall have the burden to prove by show of
13 substantial evidence that the licensing action in
14 the notice has been taken.

15 You heard from both Investigator
16 Mitchell and Investigator Fiorentine, who visited
17 the establishment on that night the investigators
18 travel in pairs to ensure that they can verify
19 the establishment producing noise. They
20 identified Empire Lounge as the source of music
21 heard with the complainant's home that night.
22 The investigators explained that they
23 exhaustively traveled through complainant's home
24 identifying the intensity of the noise as they
25 traveled closer and closer to the establishment.

1 Therefore, the District has proven the
2 charge in the notice to show cause and requests
3 the Board apply a penalty consistent with D.C.
4 Code Section 25-830. Thank you.

5 CHAIRPERSON ANDERSON: Thank you, Mr.
6 Jordan. Mr. Bianco?

7 MR. BIANCO: Thank you, Mr. Chair. As
8 I mentioned at the outset, I'd like to submit
9 written findings of fact -- or proposed findings
10 of fact and conclusions of law. If the Board
11 prefers, I could also give a brief closing
12 orally, but I'm glad to rest on my briefs.

13 CHAIRPERSON ANDERSON: Well, I was
14 about to ask a question, but you -- if that's
15 your -- if that is your call, sir, then so be it
16 if you -- if that's what you -- if you want us to
17 rely on your brief then -- but I think what would
18 be, for the record, maybe you can just give a
19 brief closing and then we'll look forward to
20 further legal arguments that I guess that you
21 plan to make.

22 MR. BIANCO: Absolutely. Glad to do
23 that very briefly. So D.C. Code 25-725 prohibits
24 establishments from emanating noises using
25 certain devices, mechanical devices, machines,

1 apparatus, bells, horns, gongs, musical
2 instruments, et cetera, that can be heard inside
3 of residences except in non-residentially-zoned
4 areas. Primarily, the Government has -- well,
5 the Government's failed to meet its burden in
6 this case primarily because they have not put
7 sufficient evidence in the record as to the
8 address of this particular residence such that
9 the Board can made a determination that his was a
10 residential zone.

11 Second, the Government has not proved
12 by clear and convincing evidence that this --
13 that the noise at issue in this case was
14 emanating specifically from the establishment.
15 There were a number of failures here. There was
16 not sufficient verification that the noise was
17 not emanating from one of the immediately
18 adjacent establishments into the residence at
19 issue in this case.

20 Also of note, the Government relies on
21 assumption for what device or instrument, if any,
22 was causing this noise. The testimony that you
23 heard was that the investigators didn't even
24 bother to enter, so they can't say that per the
25 statutory requirement, the noise was coming from

1 a musical instrument, a bell, a horn, a gong, an
2 amplification device, because they didn't see it.

3 An additional failure in the
4 Government's case is that the statute allows for
5 noise to be heard in neighboring residences that
6 is caused by opening of entrance and exit doors
7 for the purposes of ingress and egress. And I
8 think the Government -- the testimony put on by
9 the Government demonstrates that this is what is
10 going on. Specifically, Investigator Fiorentine
11 put on testimony that the noise stopped when the
12 rear exit door of the establishment was closed.

13 And the last thing that I would like
14 to mention about failures in the Government's
15 case is the investigators didn't even bother to
16 follow the standard operating procedure to
17 determine the source of the noise. The testimony
18 is that this is a two-person job, and the way
19 that it is supposed to be executed is with one
20 person standing outside of the establishment, one
21 person standing inside of the unit communicating
22 as to specifically what music is being played to
23 be identified by beat or lyrics. I'm sure the
24 Board has seen that in countless cases. That's
25 the testimony in this case, only they didn't

1 actually do it. The testimony that we did hear
2 is the establishments in immediate proximity to
3 the licensee in this case have similar types of
4 endorsements on their licenses and play similar
5 types of music that the licensee does. So for --
6 as a result of the material failures in the
7 Government's case, it's going to be our argument
8 on the papers that they have not met their burden
9 and the matter should be dismissed.

10 In the alternative, if the Board finds
11 that the Government did meet its burden, this is
12 a secondary tier violation, and it is warning
13 eligible. So if the Board does find a violation
14 in this case, we would ask that the appropriate
15 sanction be a warning, although we are confident
16 that you will find no violation. Thank you very
17 much.

18 CHAIRPERSON ANDERSON: Thank you, Mr.
19 Bianco. The record now closed and my next
20 question, do the parties wish to file proposed
21 findings facts and conclusions or law or waive
22 their right to do so. And I guess, Mr. Bianco,
23 you've already stated that you wish to do so.
24 All right. Mr. Jordan?

25 MR. JORDAN: Yes, we will also.

1 CHAIRPERSON ANDERSON: All right.
2 Since the parties have chosen to file proposed
3 findings of fact and conclusions of law, then 90
4 days from the date when the Board receives
5 proposed findings of fact and conclusions of will
6 -- the decision will be issued.

7 The proposed findings of fact and
8 conclusions of law, they're due to the Board
9 within 30 days after receipt of the transcript.
10 The transcript will be emailed to the parties in
11 approximately three weeks. And of course, if you
12 change your mind, you should inform opposing
13 parties and then the Board.

14 All right. I want to thank everyone
15 for their presentations today, and the Board will
16 take this matter under -- give me one minute,
17 please.

18 As Chairperson of the Alcoholic
19 Beverage Control Board for the District of
20 Columbia, in accordance with D.C. Official Code
21 Section 2574(b) of the Open Meetings Act, I move
22 that the ABC Board hold a closed meeting for the
23 purpose of seeking legal advice from our counsel
24 on Case Number 21-CMP-00060, Empire Lounge,
25 pursuant to D.C. Official Code Section 2574(b)(4)

1 of the Open Meetings Act and deliberating upon
2 Case Number 21-CMP-00060, Empire Lounge, for the
3 reasons cited in D.C. Official Code Section
4 2574(b)(13) of the Open Meetings Act. Is there a
5 second.

6 MEMBER SHORT: Mr. Short. I second.

7 CHAIRPERSON ANDERSON: Mr. Short has
8 seconded the motion. We'll now have a roll call
9 vote on the motion. Mr. Short.

10 MEMBER SHORT: Mr. Short. I agree.

11 CHAIRPERSON ANDERSON: Mr. Cato.

12 MEMBER CATO: Bobby Cato. I agree.

13 CHAIRPERSON ANDERSON: Ms. Crockett?

14 MEMBER CROCKETT: Rafi Crockett. I
15 agree.

16 CHAIRPERSON ANDERSON: Ms. Hansen.

17 MEMBER HANSEN: Jeni Hansen. I agree.

18 CHAIRPERSON ANDERSON: Mr. Grandis.

19 MEMBER GRANDIS: Edward Grandis. I
20 agree.

21 CHAIRPERSON ANDERSON: And Mr.
22 Anderson. I agree. As it appears that the
23 motion has passed, I hereby give notice that the
24 ABC Board will recess these proceedings to hold a
25 closed meeting in the ABC Board conference room

1 pursuant to Section 2574(b)(13) of the Open
2 Meetings Act.

3 Again, I want to thank both parties
4 for their presentation today. The transcript
5 will be available in approximately three weeks.
6 Thirty days after the transcript is made
7 available, the proposed findings of fact and
8 conclusions of law should be provided, and we
9 will discharge our decision within 90 days after
10 that. Thank you very much. Have a great day.

11 We are now at the end of our afternoon
12 calendar so therefore, I will close the hearing.
13 I'll adjourn for the day. As Chairperson of the
14 Alcoholic Beverage Control Board for the District
15 of Columbia, in accordance with Title 3 Chapter
16 45, Office of Open Government, I move that ABC
17 Board hold a closed meeting on March 16, 2022 for
18 the purpose of discussing and hearing reports
19 concerning ongoing or planned investigations of
20 alleged criminal or civil misconduct or
21 violations of law or regulations and seeking
22 legal advice from our legal counsel on the
23 Board's investigative agenda, legal agenda, and
24 licensing agenda for March 16, 2022, as published
25 in DC Register on March 11, 2022. Is there a

1 second?

2 MEMBER CROCKETT: Ms. Crockett

3 seconds.

4 CHAIRPERSON ANDERSON: Ms. Crockett
5 has seconded the motion. I will now take a roll
6 call vote on the motion before us now that it has
7 been properly seconded. Mr. Short.

8 MEMBER SHORT: Mr. Short. I agree.

9 CHAIRPERSON ANDERSON: Mr. Cato.

10 MEMBER CATO: Bobby Cato. I agree.

11 CHAIRPERSON ANDERSON: Ms. Crockett?

12 MEMBER CROCKETT: Rafi Crockett. I
13 agree.

14 CHAIRPERSON ANDERSON: Ms. Hansen.

15 MEMBER HANSEN: Jeni Hansen. I agree.

16 CHAIRPERSON ANDERSON: Mr. Grandis.

17 MEMBER GRANDIS: Edward Grandis. I
18 agree.

19 CHAIRPERSON ANDERSON: And Mr.
20 Anderson. I agree. As it appears that the
21 motion has passed, I hereby give notice that the
22 ABC Board will hold the aforementioned closed
23 meeting. Pursuant to the Open Meetings Act,
24 notice will also be posted on the ABC Board
25 hearing room bulletin board, placed on the

1 electronic calendar on ABRA's website, and
2 published in DC Register in as timely a manner as
3 practical.

4 We are now adjourned for the day. I
5 would like to thank the members of the public for
6 participating in this hearing this afternoon. I
7 would also like to thank the ABC Board members
8 who have also actively participated. We're now
9 adjourned for the day, and I now direct all Board
10 members to return to executive session for
11 further business.

12 Have a great afternoon. Thank you.

13 (Whereupon, above-entitled matter went
14 off the record at 2:51 p.m.)
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Before: DC ABRA

Date: 03-09-22

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